

EYTON MORRIS WINFIELD

WJW

10 July 1994
Second Letter

Mr. P. H. Esq.

BY FAX: 01603 250749

Dear Kevin

Re: Cranberry Lea Site

Further to our telephone conversation of 3.57pm I enclose herewith the revised Heads of Agreement. I have incorporated both of Shoomaths clauses at clause 7 and 8 rewording the old clause 7 to become the new clause 9. A clean copy is accompanying this fax and you should obtain the signature of Avonave Limited. They should sign by either two directors or a director and secretary where indicated along the dotted lines. Please return the Heads of Agreement, updated, not via the fax machine please. We require the hard copy. In turn you will need to put us in funds and advise during my absence please with Laura Holdaway.

Yours sincerely



ANDREW WINFIELD

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SUBJECT TO CONTRACT

AGREEMENT between RACKWOOD COLLIERY COMPANY LIMITED whose registered office is 3 Swanwick Court Alfreton Derbyshire DE55 7AS (hereafter referred to as "the Seller") and AVONEVE LIMITED whose registered office is at Old Church Chambers Sandhill Road Northampton NN5 5LH (hereafter referred to as "the Purchaser")

The following are the Heads of Terms between both parties.

- 1 This Agreement relates to land adjoining and in the vicinity of Junction 25 of the M6 Motorway near Wigan Lancashire ("the Option Land"). The Option Land is made up of several tranches of land belonging to different owners and comprises of approximately 187.5. The Option Land is shown on the attached plan and edged in different colours to differentiate the various options.
- 2 The Seller has procured or will procure the individual options to purchase the freehold lands shown on the attached plan and has agreed with the Purchaser to assign the benefit of those options to the Purchaser upon the following terms.
 - 2.1 The land edged orange and edged blue on the attached plan comprises of approximately 110 acres. Under the terms of this Option Agreement planning permission ("Planning") must be applied for before 22 December 1998 and when Planning is granted a payment of £1,250,000.00 plus indexation from 22 June 1997 (indexation to be the higher of the Index of Retail Prices and the Nationwide Building Society Monthly House Price Index) must be paid for the land and buildings ("the McGuire Option").
The Seller has already paid an initial payment of £10,000 and a

subsequent payment of £12,500 to secure this Option Agreement. There are no clawback provisions within this Option Agreement.

2.2 (2)

The land edged red on the attached plan comprises of approximately 13 acres. It is intended that the Seller will pay the sum of £3,000 to secure this option. Under the terms of this option a further payment of £150,000 must be paid on exercising the option and such additional payments as are provided for and more particularly set out in the Option Agreement ("the Carroll Option")

2.3

(3)

The land edged purple on the attached plan comprises of approximately 20 acres. It is intended that the Seller will pay the sum of £3,000 to secure this option. This option must be exercised within 24 months and a further payment of £120,000 must be paid and such additional payments as are provided for and more particularly set out in the Option Agreement ("the Wadsworth Option")

2.4

(3)

The land edged yellow on the attached plan comprises of approximately 17.5 acres. Under the terms of this option the Seller is to pay the sum of £30,000 upon signing the Option Agreement. This is a two year option. To exercise the option a payment of 50% of the net development value of the land must be paid with a minimum figure to be paid in any event of £50,000 per acres. There is no restriction in time and no clawback provisions. The Purchaser is obliged to pay such additional payments as are provided for and more particularly set out in the Option Agreement ("the Broster Option")

2.5

The land edged green on the attached plan comprises of approximately 23 acres of which 2.5 acres falls within an area zoned by the Wigan

Town Plan for residential development. This is a Contract not an option. Under the terms of this Contract the Seller shall purchase the freehold title to the land upon payment of a deposit of £27,500 and on payment of a further sum of £247,500 within 30 days of signing and exchanging the Contract. The land is sold subject to an existing Agricultural Tenancy. In order to gain vacant possession pursuant to the service of an Agricultural Notice to terminate the Agricultural Tenancy the Purchaser will need to have first obtained Planning Permission for change of use and will then have to pay a further sum equivalent to six years land rent to be paid to the tenant farmer ("the Hodgkinson Contract")

If however vacant possession is required earlier or in other circumstances then it has been intimated to the Seller that upon payment of a sum of approximately £15,000 to the tenant farmer that he will give up vacant possession. The parties hereto agree that the Seller's Agent immediately following completion of the Hodgkinson Contract for the acquisition is authorised to offer the tenant farmer £15,000 or if refused a sum not exceeding £20,000 in order to secure immediate vacant possession and further than any sum in excess of £20,000 should not be offered until it has been first approved by both parties.

2.6

The land edged and cross hatched purple comprises of approximately 12 acres. This land included under this Option Agreement is likewise referred to under paragraph 2.3 hereof and is owned by the same person/family. Because of this a payment of £1 would be needed to secure the option. Under the terms of this Option Agreement a further

payment of £6,000 per acre will be under similar terms to that contained in paragraph 2.3 hereof and on additional payments as are provided for and more particularly set out in the Option Agreement ("the Wadsworth Option")

2.7

The land edged and cross hatched yellow on the attached plan comprises of approximately 25 acres. A payment of £1 by the Seller would be required to secure this option. There is no clawback in respect of road or highway purposes but there are additional payments and such additional payments are provided for and more particularly set out in the Option Agreement ("the Broster Option")

3 It is hereby agreed by the parties that any options which have development clawbacks will have deducted from their value or the proceeds of their disposal in whole or part all costs and outlays associated with obtaining and pursuing planning permission and also any other funds paid already under any of the Option Agreements. This does not apply to fees paid on signing the options.

4 Completion of all of the Option Agreements in regard to the Option Land must take place within 56 days of exercise of the options

5 It is further agreed by the parties that the following payment in regard to the options set out at paragraph 2.1 to 2.7 hereof, with the exception of the Hodgkinson Land (paragraph 2.5), will be made upon the signing and exchanging of these Heads of Terms culminating in a first payment by the Purchaser to the Seller's Solicitors (Shoosmiths & Harrison) of £58,502 to be

retained by the Seller's Solicitors in a stakeholder account for the sole purpose of paying the option fees. The money shall remain the property of the Purchaser until used to pay the option fees and shall be returned to them if the option fees are not paid. Shoosmiths & Harrison shall advise the Purchaser's Solicitors (Eyton Morris Winfield) as and when the various fees are paid and the options secured.

A further payment of £27,500 will be paid by the Purchaser to Shoosmiths & Harrison upon receipt by Eyton Morris Winfield of a notice from Shoosmiths & Harrison indicating that the deposit for the Hodgkinson Contract is required. This sum will be paid to Shoosmiths & Harrison as stakeholder but will remain the property of the Purchaser until such time as it is used and only then for the sole purpose of paying the deposit on the Hodgkinson Contract which if the same is not paid will be refunded to the Purchaser.

Shoosmiths & Harrison will notify Eyton Morris Winfield when the Hodgkinson Contract has been exchanged the Purchaser will make available a further sum of £247,500 in order to enable completion of the Hodgkinson Contract to take place. This sum of money will be paid to Shoosmiths & Harrison. This money remains the property of the Purchaser until such time as it is used for settlement of the balance purchase monies of the Hodgkinson Contract.

The Purchaser further agrees to pay to the Seller the sum of £1,241,498.00
("Final Payment") on signature and exchange of a legally binding Contract for
assignment of all of the Option Agreements contained within these Heads of

Terms including the Hodgkinson Contract. If the Seller is unable to secure all of the options set out herein and complete on the Hodgkinson Agreement, then this final payment will not be due or owing and any sums already paid pursuant to these Heads of Terms will be refunded to the Purchaser on a pro rata basis reflecting which options have been procured and which have not.

- 6 Under the terms of this Agreement the profits upon the disposal of all or any of the options contained within the Option Land and as herein referred to shall be distributed as follows -

6.1 First Payment

The Purchaser will retain an amount equivalent to all sums paid by the Purchaser to the Seller pursuant to the options referred to at clause 2.1 to 2.7 with the exception of paragraph 2.5 and in regard to the Hodgkinson Contract referred to at 2.5 plus in addition 10% of the value thereof.

6.2 Second Payment

The Purchaser will retain a further sum of £1,500,000.00 from the profits generated on any disposal of the whole or any part or parts of the Option Land pursuant to the option agreements after all costs and disbursements including but not limited to the reasonable and proper legal fees, agents fees, surveyors fees, architects fees and all fees incidental to and properly incurred in the submission of and the obtaining of Planning Permission have been deducted and thereafter the surplus profits, if any, will be distributed on a 50/50 basis between the Purchaser and the Seller.

IT IS HEREBY AGREED AND DECLARED as follows:-

- 1 All parties will use their best endeavours to ensure that Planning Consent is obtained for each and every part of the Option Land so far as the same is applicable as quickly as possible.
- 2 The Seller is permitted to negotiate the purchase of any further land options which may be relevant to the Option Land and which may have a benefit to the development of the Option Land as an overall project. These additional options must be first agreed by the Purchaser before being entered into
- 3 Each party is to discharge their own legal expenses
- 4 Each party will discuss the project in detail and devise an organised plan for the project to develop the Option Land
- 5 Each party will observe strict confidentiality in relation to these Heads of Terms and also in relation to all matters regarding the development of the Option Land and the project generally and both agree to a confidentiality clause to give effect to this intention being contained within the legally binding Contract to deal with the assignment of the options ("the Agreement")
- 6 Each party agrees that these Heads of Terms should now be progressed in relation to the Option Land and the project generally and will be treated as binding until the legally binding Contract to deal with the said assignment is

exchanged.

7 The Seller has agreed to pay its representative, Jack Robinson, the sum of £400,000 as payment for the services which he has provided to the Seller for introducing the Seller and the Purchaser to each other for negotiating this Agreement and for payment of all costs and disbursements incurred or to be incurred by Jack Robinson in relation to this Agreement. The sum is to be deducted from the Final Payment and is to be paid by Eytan [redacted] to the Solicitors acting for Jack Robinson, Alker & Ball of [redacted]

8 It is agreed that for the purposes of this Agreement the Seller will continue to be represented by Jack Robinson and the Purchaser by Kevin Phelan provided that it is understood and agreed that neither will be entitled to enter into any binding contract or commitment on behalf of the Seller or Purchaser and may only act with the express consent of the Seller and the Purchaser

9 It is hereby agreed for the avoidance of all doubt that these Heads of Terms are subject to all the aforementioned options under paragraphs 2.1 to 2.7 (and the Hodgkinson Contract referred to at paragraph 2.5) being legally executed exchanged and procured.

SIGNED AS A DEED by RACKWOOD)
COLLIERY COMPANY LIMITED)
acting by two directors or one director)
and the company secretary -)

Director

Secretary

SIGNED AS A DEED by)
AVONEVE LIMITED)
acting by two directors or one director)
and the company secretary -)

Director

Secretary